

REMARKS

§101 Rejections

Amended claim 1 now includes “using a processor, coupled to a memory, to allocate a contiguous memory region included in the memory.” The amendment is supported. *See, e.g.*, Specification, 5:5-20. In this cited portion of the Specification, embodiments of the invention are not business methods or “manipulations simply of public or private legal obligations.” *Ex parte Bilski*, Appeal No. 2007-1130, Slip op. at 28 (Fed. Cir. October 30, 2008). Nor can steps in amended claim 1 “be performed entirely in the human mind.” *Id.* at fn. 26. Amended claim 1, as well as amended claim 21, are tied to a particular machine. Please reconsider the rejections.

Regarding claim 11, the Specification and claim have been amended in accord with the Examiner’s helpful guidance. Please reconsider the rejection.

§103 Rejections

Claim 1 includes “filling the memory region with at least one [1] copy of an interceptor function” and “providing a starting address of a [2] copy of the interceptor function upon request for instrumentation.” The Office Action (OA), however, does not address the subject matter related to the two occurrences of “copy” in the claim. Thus, it is unclear how the art is being asserted to reject this claim. Applicant posits the asserted art lacks this subject matter. Consequently, the PTO has not met its §103 burden regarding this claim and Applicants request the PTO specifically address both “copy” references in claim 1 in a non-final office action.¹ Please note, for example, Specification, 3:10-20. Please also note that both [1] and [2] relate to the same interceptor function. Please address this nuance as the asserted art does not teach it.

Claim 1 includes “providing a starting address of a copy of the interceptor function *upon request* for instrumentation.” The OA, however, does not address the subject matter related to “upon request” in the claim. Consequently, the PTO has not met its §103 burden and Applicants request the PTO specifically address this subject matter in a non-final office action.²

¹ This omission is a failure to articulate a prima facie case of unpatentability and the burden to rebut this “rejection” has not shifted to Applicant. Consequently, a next Office Action rejecting this claim ***cannot be final*** since only then would Applicant be obligated to rebut the rejection. *See* MPEP § 706.07(a)(“second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure...”)

² *See fn.1.*

Claim 2 includes “allocating a memory region, filling the memory region, and initializing the first data structure are performed upon an *initial* request for instrumentation.” The OA, however, does not address the subject matter related to “initial” in the claim. Applicant posits the asserted art lacks this subject matter. For instance, where is the “request” in the cited passage from Stimac? Why is the request the “initial” request? Consequently, the PTO has not met its §103 burden and Applicants request the PTO specifically address this subject matter in a non-final office action.³

Claim 3 includes “wherein allocating a memory region, filling the memory region, and initializing the first data structure are performed *if all* interceptor function copies of currently allocated memory regions are associated with previous requests for instrumentation.” The OA, however, does not address the subject matter related to “if” or “all” in the claim. Applicant posits the asserted art lacks this subject matter. Consequently, the PTO has not met its §103 burden and Applicants request the PTO specifically address this subject matter in a non-final office action.⁴ Please note, for example, Specification, 3:25-30.

Claim 7 includes “selecting a *next successive element* of the second data structure as the current element for each new request for instrumentation.” The OA, however, does not address the subject matter related to “next successive element” in the claim. Applicant posits the asserted art lacks this subject matter. Consequently, the PTO has not met its §103 burden and Applicants request the PTO specifically address this subject matter in a non-final office action.⁵ Please note, for example, Specification, 3:15-16 and 4:6.

Conclusion

*If the Examiner wishes to call the undersigned to discuss embodiments of the invention or asserted art, **or the present claim amendments**, to facilitate prosecution the undersigned welcomes such a call.*

In view of these remarks, the application is now in condition for allowance and the Examiner’s prompt action in accordance therewith is respectfully requested. Applicant respectfully submits that the independent claims are allowable over any combination of the cited art. Further, the dependent claims are also allowable for the same reasons as their respective base

³ See *fn.1*.

⁴ See *fn.1*.

claims and further due to the additional features that they recite. Separate and individual consideration of the dependent claims is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

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⁵ See *fn.1*.